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FILED
AUG 19 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
MELVIN ALFARO-ZUNIGA,
Defendant.

Case No. 08CR1276-H

STIPULATION OF FACT AND JOINT MOTION FOR RELEASE OF MATERIAL WITNESS(ES) AND ORDER THEREON

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Christina M. McCall, Assistant United States Attorney, and defendant MELVIN ALFARO-ZUNIGA, by and through and with the advice and consent of defense counsel, Joseph M. McMullen, Esq., that:

1. Defendant agrees to execute this stipulation on or before the change-of-plea hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to counts 2 of the Indictment charging defendant with a non-mandatory minimum count of Transportation of Illegal Aliens and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II).

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2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government prior to the disposition date set by the Court.

3. The material witnesses, Sergio De La Crus-Cervantes, Andres Vizcaino-Galarza, and Diego Mora-Ricon, in this case:

a. Are aliens with no lawful right to enter or remain in the United States;

b. Were each paying, or having others pay on their behalf, $2,500 to others in order to be brought into the United States illegally and/or transported illegally to their destination therein;

c. After illegally crossing the border into the United States, stayed overnight in a house in the United States;

d. On April 1, 2008, were loaded along with 17 other illegal aliens into a trailer, and then driven towards Los Angeles, the aliens' intended destination;

e. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

4. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

a. The stipulated facts set forth above shall be admitted as substantive evidence;

b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,

c. Understanding that under Crawford v. Washington, 541 U.S. 36 (2004), "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant waives the right to confront and cross-examine the material witness(es) in this case.

5. By signing this stipulation and joint motion, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant certifies further that defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witness(es) to the Department of Homeland Security for return to their country of origin.

It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

Dated: 8-19-08.

CHRISTINA M. McCALL
Assistant United States Attorney

Dated: 8-17-2008.

JOSEPH M. McMULLEN
Defense Counsel for Melvin Alfaro-Zuniga

Dated: 08-17-08.

MELVIN ALFARO-ZUNIGA
Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 8/19/08.

Barbara L. Major
United States Magistrate Judge